

**ASSEMBLY BILL**

**No. 1244**

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**Introduced by Assembly Member Wolk**

February 22, 2005

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An act to amend Sections 79401, 79402, 79403.5, 79412, 79415, 79420, 79421, 79440, 79450, 79452 and 79460 of, to amend and repeal Sections 79420, 79423, 79453, and 79455, of, to add Sections 79472 and 79473 to, to repeal Sections 79406 and 79422 of, and to repeal Chapter 3 (commencing with Section 79475) of Division 26.4 of, the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1244, as introduced, Wolk. CALFED Bay-Delta Program.

Existing law, the California Bay-Delta Authority Act, establishes in the Resources Agency the California Bay-Delta Authority, with membership as prescribed, including state and federal government representatives, until January 1, 2006, unless a certain determination is made. The act requires the authority, on or before November 15 of each year, to review progress in implementing the California Bay-Delta Program and, on or before December 15 of each year, to submit a report to various persons and entities that describes the implementation of the program for the prior fiscal year. The act authorizes the Governor, in consultation with the United States Secretary of the Interior, to appoint a director. The act requires the implementing agencies, as defined, to annually submit to the director their program plan and proposed budget, as prescribed.

Existing federal law, the CALFED Bay-Delta Authorization Act authorizes the represented federal agencies to participate in the

program and authorizes the secretary and federal agency heads to carry out program activities in listed categories.

This bill would modify the state act to clarify the relationship of the authority and its implementing agencies with the federal government with regard to the program, and to conform the state act to the federal act, including changing the title of the program to the CALFED Bay-Delta Program, requiring state agencies to cooperate with federal agencies to meet the goals and objectives of the program, requiring state agencies to comply with the state act without respect to the cooperation of federal agencies, and removing references to federal authorizing legislation. The bill would establish a board to govern the authority, comprised of the existing representatives, members, and ex officio members of the authority. The bill would designate the member from the Bay-Delta Public Advisory Committee as a public member.

The bill would authorize the authority to enter into cooperative agreements with individuals, associations, private entities, boards of supervisors, and with state or federal departments, divisions, bureaus, boards, or commissions for the purpose of carrying out the program, to acquire and manage office space, and to use digital signatures for all documents.

The bill would require that report on or before February 15 of each year, in coordination with the secretary. The bill would require the authority to review, and comment to the appropriate implementing agency or agencies with regard to, regulations, guidelines, criteria, and awards proposed by the implementing agency or agencies to carry out a specified grant program.

The bill would delete an existing requirement to develop, and report on, an administrative efficiency pilot program.

The bill would additionally authorize the Governor, in consultation with the secretary, to appoint a chief counsel.

The bill would authorize the Bay-Delta Public Advisory Committee to be treated as a state advisory committee. The bill would exempt members of the committee or its subcommittees from certain financial interest restrictions when they are advising and making recommendations to the authority and director on proposed grant solicitation packages.

The bill would authorize the lead scientist and the director to seek assistance and review from scientific experts in the development of scientific programs, performance measures, research questions and

other scientific issues. The bill would exempt a member of the Independent Science Board (ISB) or other science advisory panel, or an independent scientific expert who assists an implementing agency or the authority from certain financial interest restrictions with regard to participation in the making of a contract that results from a competitive process to fund scientific research, unless the scientific expert participated directly in the preparation of the grant solicitation package or the selection of projects to be funded. The bill would exempt from the Bagley-Keene Open Meeting Act the ISB and any other independent science panel established to assist the implementing agencies and the authority, but would subject those entities to other public accountability requirements, as prescribed.

The bill would remove the repeal provisions of the state act, thereby extending the state act indefinitely.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 79401 of the Water Code is amended to  
2 read:  
3 79401. The Legislature finds and declares all of the following:  
4 (a) The San Francisco Bay/Sacramento-San Joaquin Delta  
5 Estuary is the largest estuary on the West Coast of the United  
6 States. It includes over 738,000 acres in five counties. The  
7 tributaries, sloughs, and islands support over 750 plant and  
8 animal species.  
9 (b) The bay-delta, its tributaries, and watershed are critical to  
10 California's economy, supplying drinking water for two-thirds of  
11 Californians and irrigation water for over 7,000,000 acres of the  
12 most highly productive agricultural land in the world. It also  
13 supports 80 percent of the state's commercial salmon fisheries.  
14 (c) The bay-delta is the hub of California's two largest water  
15 distribution systems--the Central Valley Project, operated by the  
16 federal Bureau of Reclamation and the State Water Project,  
17 operated by the California Department of Water Resources. It  
18 also provides the conveyance of flood waters from most of the  
19 rivers in the Central Valley.

(d) Conflicts currently exist regarding water use for the purposes of water quality, fish protection, and water supply that demonstrate how little flexibility the state's water supply systems have to meet the state's growing demand for water and the need to protect the environment.

(e) A solution to these problems requires state, federal, tribal, and local action in numerous regions throughout the state, not only in the bay-delta itself, but also in the bay-delta watershed and the areas that depend on water exported from the bay-delta. The ~~California~~ CALFED Bay-Delta Program is divided into the following five regions:

(1) Sacramento and San Joaquin River Delta.

(2) San Francisco Bay.

(3) Sacramento Valley.

(4) San Joaquin Valley.

(5) Southern California.

(f) ~~Nearly two dozen~~ Numerous state and federal agencies have some role in managing or regulating the natural resources of the bay-delta and its watershed. A coordinated implementation structure and organization is necessary for the effective implementation of the ~~California~~ CALFED Bay-Delta Program. The state and federal agencies participating in the program include all of the following: the Resources Agency, Department of Water Resources, Department of Fish and Game, Department of Food and Agriculture, California Environmental Protection Agency, State Water Resources Control Board, State Department of Health Services, *Department of Conservation, Department of Parks and Recreation, Delta Protection Commission, Bay Conservation and Development Commission, State Reclamation Board*, United States Department of the Interior, United States Department of Agriculture, United States Bureau of Reclamation, United States Fish and Wildlife Service, United States Geological Survey, United States Bureau of Land Management, United States National Marine Fisheries Service, United States Environmental Protection Agency, United States Army Corp of Engineers, United States Natural Resources Conservation Service, United States Forest Service, and Western Area Power Administration.

(g) The agencies participating in the ~~California~~ CALFED Bay-Delta Program have prepared a 30-year plan to coordinate

1 existing programs and direct new programs to improve the  
2 quality and reliability of the state's water supplies and to restore  
3 the ecological health of the bay-delta watershed.

4 (h) To ensure efficiency, transparency, and accountability in  
5 decisionmaking, the implementation of the ~~California~~ CALFED  
6 Bay-Delta Program requires the establishment of an authority.  
7 The authority is intended to accomplish all of the following:

8 (1) Provide accountability to the Legislature, Congress, and  
9 interested parties for the program's performance.

10 (2) Promote the implementation of the program in a balanced  
11 manner.

12 (3) Provide consistent monitoring, assessment, and reporting  
13 of the agencies' individual and cumulative actions.

14 (4) Provide the use of sound, consistent science across all  
15 program elements.

16 (5) Coordinate existing and new government programs to meet  
17 common goals, avoid conflicts, and eliminate redundancy and  
18 waste.

19 (6) Oversee coordinated implementation of the ~~California~~  
20 CALFED Bay-Delta Program in a manner that is consistent with  
21 the mission statement, goals, and objectives of the CALFED  
22 Bay-Delta Program Record of Decision, dated August 28, 2000,  
23 or as it may be amended.

24 (7) Promote the development and implementation of regional  
25 programs to advance the program elements.

26 (i) The successful implementation of the ~~California~~ CALFED  
27 Bay-Delta Program will require the full cooperation and  
28 participation of many federal agencies. ~~The Legislature, in~~  
29 ~~adding this division, expects the subsequent enactment of federal~~  
30 ~~legislation authorizing the full participation of federal agencies in~~  
31 ~~the authority established and activities prescribed by this~~  
32 ~~division. Until that federal legislation is enacted, federal~~ *Federal*  
33 agencies are invited to participate in the authority and its  
34 activities, as described in this division, to the extent ~~possible~~  
35 ~~under existing federal agency authorizations~~ *authorized under*  
36 *federal law*.

37 SEC. 2. Section 79402 of the Water Code is amended to read:

38 79402. Unless the context otherwise requires, the following  
39 definitions set forth in this section govern the construction of this  
40 division:

1 (a) “Authority” means the California Bay-Delta Authority.

2 (b) “Balance” or “balanced implementation” means the  
3 implementation of projects, programs, or other actions in a  
4 manner that meets both of the following requirements:

5 (1) Is consistent with the implementation schedule and  
6 milestones described in the CALFED Bay-Delta Program Record  
7 of Decision, dated August 28, 2000, or as it may be amended.

8 (2) Results in concurrent improvement in all program elements  
9 in a manner that ensures that improvements in some program  
10 elements are not made without corresponding improvements in  
11 other program elements.

12 (c) “Bay-delta” means the San Francisco Bay/Sacramento-San  
13 Joaquin Delta Estuary.

14 (d) “Bay-Delta Public Advisory Committee” means the  
15 Bay-Delta Public Advisory Committee established by charter  
16 issued by the United States Department of Interior, ~~dated June 8,~~  
17 ~~2001, and filed on July 2, 2002.~~

18 (e) ~~“California-CALFED Bay-Delta Program”~~ or “Bay-Delta  
19 Program” means those projects, programs, commitments, and  
20 other actions that address the goals and objectives of the  
21 CALFED Bay-Delta Program Record of Decision, dated August  
22 28, 2000, or as it may be amended.

23 (f) “Category A programs” means those state and federal  
24 agency programs and funds that are to be managed and  
25 implemented consistent with the ~~California~~ CALFED Bay-Delta  
26 Program’s goals and objectives.

27 (g) “Director” means the Director of the California Bay-Delta  
28 Authority.

29 (h) “Implementing agencies” means those agencies with the  
30 primary responsibility for implementing the program elements,  
31 subject to Sections 79440 and 79441.

32 (i) ~~“Program elements” means the following 11 program~~  
33 ~~elements of the California~~ *are categories in which agency*  
34 *programs are grouped for management and planning purposes.*  
35 *The CALFED Bay-Delta Program consists of the following 11*  
36 *program elements:*

37 (1) Levee system integrity.

38 (2) Water quality.

39 (3) Water supply reliability.

40 (4) Ecosystem restoration.

1 (5) Water use efficiency.

2 (6) Water transfer.

3 (7) Watershed.

4 (8) Storage.

5 (9) Conveyance.

6 (10) Science.

7 (11) Environmental water account.

8 (j) *“Program plan” means the plans prepared annually by the*  
9 *implementing agencies that include annual and multiyear*  
10 *accomplishments, major activities, cross program integration,*  
11 *schedules, annual budgets, and multiyear expenditure plans.*

12 (k) *“Projects” means both programs and capital projects.*

13 SEC. 3. Section 79403.5 of the Water Code is amended to  
14 read:

15 79403.5. (a) The authority and the *state* implementing  
16 agencies shall carry out the programs, projects, and activities  
17 necessary to implement the Bay-Delta Program in accordance  
18 with Section 79441. The authority shall coordinate the activities  
19 of the *state and federal* implementing agencies to promote  
20 balanced implementation that meets the goals and objectives of  
21 the Bay-Delta Program.

22 (b) State agencies, whenever feasible, shall carry out their  
23 authority and responsibilities in a manner that is consistent with  
24 the goals of the Bay-Delta Program to promote cooperative and  
25 coordinated actions and programs that result in balanced  
26 solutions to bay-delta problems.

27 (c) Nothing in this division shall be construed to restrict or  
28 override constitutional, statutory, regulatory, or adjudicatory  
29 authority or public trust responsibilities of any federally  
30 recognized Indian tribe, or any local, state, or federal agency, or  
31 to restrict or override authority or responsibility of state, federal,  
32 or local water project operations under applicable law and  
33 contracts. This division does not abrogate or modify state laws  
34 with respect to responsibilities to the State Water Project  
35 bondholders and shall be implemented in a manner consistent  
36 with Sections 10505 and 10505.5, Article 3 (commencing with  
37 Section 11460) of Chapter 3 of Part 3 of Division 6, and Chapter  
38 1 (commencing with Section 12200) of Part 4.5 of Division 6.

39 (d) *State agencies shall cooperate with federal agencies to*  
40 *meet the goals and objectives of the program. However, nothing*

1 *in this division shall be construed to give any federal agency or*  
2 *official the authority to modify, halt, or otherwise restrict the*  
3 *discretion of any state agency.*

4 SEC. 4. Section 79406 of the Water Code is repealed.

5 ~~79406. State agencies, including the authority, shall work~~  
6 ~~with federal agencies and the Congress of the United States to~~  
7 ~~obtain, as soon as reasonably feasible, the necessary federal~~  
8 ~~approvals, including federal legislation, that will enable the~~  
9 ~~federal agencies to participate with the state in the governance of~~  
10 ~~the Bay-Delta Program pursuant to this division.~~

11 SEC. 5. Section 79412 of the Water Code is amended to read:

12 79412. (a) The authority shall *be governed by a board, which*  
13 *shall* include representatives from six state agencies and six  
14 federal agencies if those identified federal agencies are  
15 authorized to participate, ~~seven~~ *eight* public members, *including,*  
16 *but not limited to,* one member of the Bay-Delta Public Advisory  
17 Committee, and four nonvoting ex officio members, as follows:

18 (1) The Secretary of the Resources Agency.

19 (2) The Secretary of the California Environmental Protection  
20 Agency.

21 (3) The Director of Water Resources.

22 (4) The Director of Fish and Game.

23 (5) The State Director of Health Services.

24 (6) The Secretary of the Department of Food and Agriculture.

25 (7) The Secretary of the Interior.

26 (8) The Regional Administrator of Region IX of the United  
27 States Environmental Protection Agency.

28 (9) The Operations Manager of the California/Nevada  
29 Operations Office of the United States Fish and Wildlife Service.

30 (10) The Regional Director of the United States Mid-Pacific  
31 Region of the Bureau of Reclamation.

32 (11) The District Engineer of the United States Sacramento  
33 District of the Army Corp of Engineers.

34 (12) The Regional Administrator of the Southwest Region of  
35 the United States National Marine Fisheries Service.

36 (13) One public member from the Sacramento and San  
37 Joaquin River Delta Region.

38 (14) One public member from the San Francisco Bay Region.

39 (15) One public member from the Sacramento Valley Region.

40 (16) One public member from the San Joaquin Valley Region.



1 (17) One public member from the Southern California Region.

2 (18) One *public* member—~~of~~ *from* the Bay-Delta Public  
3 Advisory Committee.

4 (19) Two at-large *public* members.

5 (20) The Chairperson and Vice Chairperson of the Assembly  
6 Water Parks and Wildlife Committee, or its successor, as ~~a~~  
7 nonvoting, ex officio ~~member~~ *members*.

8 (21) The Chairperson and Vice Chairperson of the Senate  
9 Agriculture and Water Resources Committee, or its successor, as  
10 a nonvoting, ex officio ~~member~~ *members*.

11 (b) The five public members subject to regional requirements  
12 shall be appointed by the Governor, in consultation with the  
13 Secretary of the Interior ~~if appropriate federal authorizing~~  
14 ~~legislation has not been enacted, or with the concurrence of the~~  
15 ~~Secretary of the Interior if appropriate federal authorizing~~  
16 ~~legislation has been enacted~~, and with the advice and consent of  
17 the *state* Senate.

18 (c) One at-large public member shall be appointed by the  
19 President Pro Tempore of the Senate in consultation with the  
20 Secretary of the Interior.

21 (d) One at-large public member shall be appointed by the  
22 Speaker of the Assembly in consultation with the Secretary of the  
23 Interior.

24 (e) (1) For the purposes of being eligible to serve on the  
25 board, a public member described in any of the paragraphs (13)  
26 to (17), inclusive, of subdivision (a) shall be required to live in  
27 the region he or she represents.

28 (2) A public member shall have substantial training, expertise,  
29 and knowledge as follows:

30 (A) With regard to at least one of the following areas:  
31 ecosystem restoration, levees, water supply, or water quality.

32 (B) With regard to labor, Native American matters, local  
33 government, the environment, or business if that public member  
34 meets the requirements of subparagraph (A).

35 (f) The public members, as a group, shall reflect a broad range  
36 of the experience and knowledge described in subdivision (e).

37 (g) The representative of the Bay-Delta Public Advisory  
38 Committee shall be selected by a majority vote of all the  
39 members of that committee.

1 (h) A member of the authority described in any of the  
2 paragraphs (1) to (12), inclusive, of subdivision (a) may  
3 designate, in writing, a deputy director of that member's agency,  
4 or a person occupying an equivalent classification, to act in the  
5 place of that member if that member is absent.

6 (i) The federal representatives described in paragraphs (7) to  
7 (12), inclusive, of subdivision (a) may participate as nonvoting  
8 members ~~until federal authorizing legislation is enacted and upon~~  
9 ~~the enactment of that legislation, shall become voting members.~~

10 SEC. 6. Section 79415 of the Water Code is amended to read:

11 79415. (a) Except as provided in subdivision (b), a public  
12 member of the authority shall hold office for a term of four years,  
13 and *notwithstanding Section 1774 of the Government Code, a*  
14 *public member shall continue to serve, upon expiration of his or*  
15 *her term* until a successor is appointed.

16 (b) In the case of the public members initially appointed by the  
17 Governor, two members shall be appointed to serve until January  
18 1, 2004, and three members until January 1, 2006.

19 (c) The Governor, in consultation with the Secretary of the  
20 Interior, shall appoint one of the authority members as a  
21 chairperson who shall preside at all meetings, and a  
22 vice-chairperson who shall preside in the absence of the  
23 chairperson.

24 (d) For the purposes of conducting the authority's business, a  
25 quorum of eleven voting members of the *board of the* authority  
26 shall be present, which shall include at least three public  
27 members. *Members listed in paragraphs (1) to (19), inclusive, of*  
28 *subdivision (a) of Section 79412 may be counted towards the*  
29 *establishment of a quorum.* All actions approved by the authority  
30 shall require an affirmative vote of a majority of the authority  
31 members eligible to vote.

32 (e) The authority may form committees, and the committees  
33 may make recommendations to the full authority.

34 (f) Each public member of the authority shall receive  
35 compensation in the amount of one hundred dollars (\$100) per  
36 day, not to exceed eight hundred dollars (\$800) per month, for  
37 conducting any authority business authorized by the authority,  
38 upon the approval of the compensation by a majority of the  
39 authority members by a recorded vote. A public member may

1 also receive reimbursement for the necessary expenses incurred  
2 by the member in the performance of the member's duties.

3 SEC. 7. Section 79420 of the Water Code, as added by  
4 Section 2 of Chapter 812 of the Statutes of 2002, is repealed.

5 ~~79420. The authority may exercise all of the following~~  
6 ~~powers:~~

7 ~~(a) Sue or be sued.~~

8 ~~(b) Delegate administrative functions to the staff of the~~  
9 ~~authority.~~

10 ~~(c) Request reports from state, federal, and local government~~  
11 ~~agencies on issues related to the implementation of the California~~  
12 ~~Bay-Delta Program.~~

13 ~~(d) Receive funds, including funds from private and local~~  
14 ~~government sources, contributions from public and private~~  
15 ~~sources, as well as state and federal appropriations.~~

16 ~~(e) Enter into contracts. The authority and the Department of~~  
17 ~~General Services shall establish procedures to delegate authority~~  
18 ~~to the authority or the director, as appropriate, to execute~~  
19 ~~contracts of up to one million dollars (\$1,000,000), and to~~  
20 ~~maximize flexibility and efficiency in implementing authority~~  
21 ~~activities.~~

22 ~~(f) Disburse funds through grants, public assistance, loans, and~~  
23 ~~contracts to entities, including federally recognized Indian tribes,~~  
24 ~~within the Bay-Delta Program regions, as described in~~  
25 ~~subdivision (c) of Section 79401, to carry out the Bay-Delta~~  
26 ~~Program goals and objectives.~~

27 ~~(g) Employ the services of other public, nonprofit, or private~~  
28 ~~entities.~~

29 ~~(h) Employ its own legal staff or contract with other state or~~  
30 ~~federal agencies for legal services, or both. The authority may~~  
31 ~~employ special legal counsel with the approval of the Attorney~~  
32 ~~General.~~

33 ~~(i) Adopt regulations as needed for the implementation of this~~  
34 ~~division. A federal representative may decline to participate in~~  
35 ~~actions described in this subdivision if he or she identifies a~~  
36 ~~constitutional or statutory limitation on that participation. The~~  
37 ~~authority granted by this subdivision does not extend to the~~  
38 ~~adoption of regulations to implement the program elements~~  
39 ~~described in subdivisions (a) to (f), inclusive, and subdivision (h)~~  
40 ~~of Section 79441.~~

1 ~~(j) Obtain and hold regulatory permits and prepare~~  
2 ~~environmental documents.~~

3 ~~(k) Pursuant to Section 78684.8, the authority is hereby~~  
4 ~~designated the successor to the Secretary of the Resources~~  
5 ~~Agency for the purpose of carrying out the balancing and related~~  
6 ~~procedures established pursuant to Section 78684.12.~~

7 SEC. 8. Section 79420 of the Water Code, as added by  
8 Chapter 955 of the Statutes of 2002, is amended to read:

9 79420. ~~(a)~~ The authority may exercise all of the following  
10 powers:

11 ~~(1)~~

12 ~~(a)~~ Sue or be sued.

13 ~~(2)~~

14 ~~(b)~~ Delegate administrative functions to the staff of the  
15 authority.

16 ~~(3)~~

17 ~~(c)~~ Request reports from state, federal, and local government  
18 agencies on issues related to the implementation of the ~~California~~  
19 CALFED Bay-Delta Program.

20 ~~(4)~~

21 ~~(d)~~ Receive funds, including funds from private and local  
22 government sources, and contributions from public and private  
23 sources, as well as state and federal appropriations. *Receivable*  
24 *authority is not required and funds shall be available, without*  
25 *regard to fiscal years, until expended.*

26 ~~(5)~~

27 ~~(e)~~ Enter into contracts consistent with existing contracting  
28 practices of the Department of General Services, *if the director*  
29 *has the authority for final approval of contracts of five hundred*  
30 *thousand dollars (\$500,000) or below.*

31 ~~(6)~~

32 ~~(f)~~ *Enter into cooperative agreements with individuals,*  
33 *associations, private entities, boards of supervisors, and with*  
34 *state or federal departments, divisions, bureaus, boards, or*  
35 *commissions for the purpose of carrying out the CALFED*  
36 *Bay-Delta Program.*

37 ~~(g)~~ Disburse funds through grants, public assistance, loans,  
38 and contracts to entities, including federally recognized Indian  
39 tribes, within the Bay-Delta Program regions, as described in  
40 subdivision (e) of Section 79401, to carry out the Bay-Delta

1 Program goals and objectives. *Grant awards shall be made by*  
2 *the authority on a competitive or alternative basis established by*  
3 *the authority, consistent with applicable bond law. Procedures,*  
4 *forms, and guidelines adopted or established for these grant*  
5 *programs, including the application process, are not subject to*  
6 *Chapter 3.5 (commencing with Section 11340) of Part 1 of*  
7 *Division 3 of Title 2 of the Government Code. Consistent with*  
8 *Section 10295 of the Public Contract Code and Section 4.06 of*  
9 *the State Contracting Manual, grant funding agreements are not*  
10 *subject to approval of the Department of General Services.*

11 ~~(7)–~~  
12 (h) Employ the services of other public, nonprofit, or private  
13 entities.

14 ~~(8)–~~  
15 (i) Employ its own legal staff or contract with other state or  
16 federal agencies for legal services, or both. The authority may  
17 employ special legal counsel with the approval of the Attorney  
18 General.

19 ~~(9)–~~  
20 (j) *Acquire and manage office space.*  
21 (k) *Use digital signatures for all documents.*  
22 (l) Adopt regulations as needed for the implementation of this  
23 division. A federal representative may decline to participate in  
24 actions described in this subdivision if he or she identifies a  
25 constitutional or statutory limitation on that participation. The  
26 authority granted by this paragraph does not extend to the  
27 adoption of regulations to implement the program elements  
28 described in subdivisions (a) to (f), inclusive, and subdivision (h)  
29 of Section 79441.

30 ~~(10)–~~  
31 (m) Obtain and hold regulatory permits and prepare  
32 environmental documents.

33 ~~(11)–~~  
34 (n) Pursuant to Section 78684.8, the authority is hereby  
35 designated the successor to the Secretary of the Resources  
36 Agency for the purpose of carrying out the balancing and related  
37 procedures established pursuant to Section 78684.12.

38 ~~(b) This section shall become operative only if this bill and~~  
39 ~~Senate Bill 1653 of the 2001–02 Regular Session are both~~  
40 ~~chaptered and become effective on or before January 1, 2003,~~

1 ~~and this bill is chaptered last, in which case this section shall~~  
2 ~~prevail over Section 79420, as added by Senate Bill 1653.~~

3 SEC. 9. Section 79421 of the Water Code is amended to read:

4 79421. The authority shall carry out the following duties:

5 (a) Develop policies and make decisions at program  
6 milestones, and provide direction to achieve balanced  
7 implementation, integration, and continuous improvement in all  
8 program elements.

9 (b) Track the progress of all program projects and activities  
10 and assess overall achievement of the goals and objectives of the  
11 ~~California~~ CALFED Bay-Delta Program.

12 (c) Modify, as needed, the ~~California~~ CALFED Bay-Delta  
13 Program's timelines and activities where the authority deems it  
14 necessary to ensure that the program meets its overall goals and  
15 objectives. Modification shall be coordinated with implementing  
16 agencies and other affected agencies with public input. The  
17 authority shall notify the appropriate policy and fiscal  
18 committees of the Legislature with regard to any modifications  
19 made by the authority.

20 (d) Communicate with the Congress of the United States and  
21 the Legislature on program progress, answer legislative inquiries,  
22 review and respond to legislative proposals, and review and  
23 submit legislative proposals.

24 (e) On or before November 15 of each year, review progress in  
25 implementing the program.

26 (f) On or before ~~December~~ *February* 15 of each year, *in*  
27 *coordination with the Secretary of the Interior*, submit a report to  
28 the Governor, the Secretary of the Interior, the Legislature, and  
29 the Congress of the United States that describes the status of  
30 implementation of all program elements for the prior fiscal year,  
31 *and includes any written determination and revised schedule*  
32 *required under subdivision (g).*

33 ~~(g) If, at the conclusion of each annual review submitted~~  
34 ~~pursuant to subdivision (f), or, if a timely annual review has not~~  
35 ~~been issued, the authority or the Governor, or the Secretary of the~~  
36 ~~Interior if federal authorizing legislation has been enacted,~~  
37 ~~determines, in writing, that either the program schedule or~~  
38 ~~objective has not been substantially adhered to, the authority, in~~  
39 ~~coordination with the Bay-Delta Public Advisory Committee, the~~  
40 ~~Governor shall, and the Secretary of the Interior may, prepare a~~

~~revised schedule that will achieve balanced progress in all program elements consistent with the intent of the California Bay-Delta Program and applicable regulatory requirements. If, at the conclusion of each annual review required by subdivision (e), or, if a timely annual review has not been issued, the authority or the Governor, in consultation with the Secretary of the Interior, determines, in writing, that either the CALFED Bay-Delta Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the CALFED Bay-Delta Program is not occurring, the authority, or the Governor, in coordination with the Bay-Delta Public Advisory Committee, shall, and the Secretary of the Interior may, prepare a revised schedule that will achieve balanced progress in all program elements consistent with the intent of the CALFED Bay-Delta Program and applicable regulatory requirements.~~

(h) To support annual implementation, the director shall prepare and submit to the Department of Finance an annual state proposed budget, prepared consistent with Section 79423, for each of the *state implementing agencies and their corresponding* program elements—~~and, including, but not limited to,~~ the authority's oversight and coordination duties, in accordance with the annual State Budget process.

(i) Coordinate with federal agencies to develop a proposed federal budget to support the ~~California~~ CALFED Bay-Delta Program that the federal agencies can submit to the President of the United States in accordance with the annual federal budget process.

(j) Manage the science program element.

(k) Coordinate, and when appropriate, assist with the integration of, the CALFED Bay-Delta Program with other related programs to maximize available resources and reduce conflicts and inconsistencies with other programs.

(l) Provide a forum for the resolution of conflicts or disputes among implementing agencies relating to the program.

(m) Seek out and promote partnerships with local interests and programs that seek to integrate various water management options, and cooperate and undertake joint activities with other persons, including local entities, Indian tribes, water users, and landowners. These activities shall include, but are not limited to,

1 planning, design, technical assistance, construction projects, and  
2 development of an independent science program.

3 (n) Develop, in cooperation with federal agencies, a regulatory  
4 coordination and streamlining process for the issuance of permits  
5 and approvals required under state and federal law as necessary,  
6 to achieve the program's goals and objectives that reduces or  
7 eliminates duplicative process.

8 (o) Adopt criteria for review, approval, and modification of  
9 ~~annual program plans and projected expenditures pursuant to~~  
10 ~~subdivision (i) of Section 79423. The criteria shall be consistent~~  
11 ~~with existing state and federal agency budget development,~~  
12 ~~review, and approval processes. The authority shall submit a~~  
13 ~~copy of the criteria to the appropriate policy and fiscal~~  
14 ~~committees of the Legislature.~~

15 (p) Meet jointly with the Bay-Delta Public Advisory  
16 Committee at least once annually.

17 (q) *Review, and comment to the appropriate implementing*  
18 *agency or agencies with regard to regulations, guidelines,*  
19 *criteria, and awards proposed by the implementing agency or*  
20 *agencies to carry out a grant program for projects and activities*  
21 *located within the CALFED solution area, that wholly or*  
22 *partially assist in the fulfillment of one or more of the goals of*  
23 *the CALFED Bay-Delta Program. That review and comment*  
24 *shall be for purposes of determining consistency with the*  
25 *CALFED Record of Decision. To avoid delays in project awards,*  
26 *the opportunity for review by the authority shall be incorporated*  
27 *into the grant program schedules established by the*  
28 *implementing agencies.*

29 SEC. 10. Section 79422 of the Water Code is repealed.

30 ~~79422. By December 15, 2003, develop a pilot program in~~  
31 ~~coordination with the Department of Personnel Administration,~~  
32 ~~the State Personnel Board, the Department of General Services,~~  
33 ~~and the Department of Finance to develop and implement actions~~  
34 ~~that are intended to increase the administrative efficiency of the~~  
35 ~~authority, including, but not limited to, budgeting, contracting,~~  
36 ~~purchasing, and personnel management. The authority shall~~  
37 ~~submit a report summarizing the implementation of this section~~  
38 ~~to the appropriate policy and fiscal committees of the Legislature~~  
39 ~~not later than 120 days after the authority commences the~~  
40 ~~implementation of the pilot program.~~



1 SEC. 11. Section 79423 of the Water Code, as added by  
2 Section 2 of Chapter 812 of the Statutes of 2002, is repealed.

3 ~~79423. (a) Implementing agencies shall annually submit to~~  
4 ~~the authority their annual program plan and proposed budget for~~  
5 ~~the following budget year describing how each implementing~~  
6 ~~agency proposes to implement their respective program elements~~  
7 ~~during the following budget year. These programs shall address~~  
8 ~~environmental justice concerns and assess the impacts of projects~~  
9 ~~and activities on tribal trust resources and tribal governmental~~  
10 ~~concerns.~~

11 ~~(b) Each annual program plan and proposed budget shall~~  
12 ~~include programs that are designated as Category A programs in~~  
13 ~~Attachment 3, entitled “Implementation Memorandum of~~  
14 ~~Understanding” of the CALFED Bay-Delta Program Record of~~  
15 ~~Decision, dated August 28, 2000, or as it may be amended.~~

16 ~~(c) Annually, the authority shall consult with the agencies~~  
17 ~~identified in subdivision (f) of Section 79401 and the Bay-Delta~~  
18 ~~Public Advisory Committee, and shall determine, with the~~  
19 ~~concurrence of the implementing agencies, those changes that~~  
20 ~~shall be made to the list of Category A programs.~~

21 ~~(d) Each annual program plan and proposed budget shall~~  
22 ~~include program priorities, work plans, proposed budgets, and~~  
23 ~~significant program products, including, but not limited to,~~  
24 ~~regulations, grant or loan solicitations, schedules for production~~  
25 ~~of environmental documents, and project selection processes.~~

26 ~~(e) Annual program plans and proposed budgets also shall~~  
27 ~~include a strategy and proposed budget for addressing~~  
28 ~~program-specific, critical scientific uncertainties, developing and~~  
29 ~~implementing performance measures, evaluating program~~  
30 ~~actions, developing strategies for incorporating tribal and~~  
31 ~~environmental justice interests, and conducting scientific review~~  
32 ~~of program implementation and proposed projects. The~~  
33 ~~implementing agency and the director shall consult with the lead~~  
34 ~~scientist, as appropriate, to determine an appropriate science~~  
35 ~~strategy and proposed budget.~~

36 ~~(f) Implementing agencies shall coordinate the preparation of~~  
37 ~~annual program plans and proposed budgets with agencies~~  
38 ~~participating in the California Bay-Delta Program, federally~~  
39 ~~recognized Indian tribes, and other appropriate agencies.~~

~~(g) The implementing agencies and the director shall seek to integrate the annual plans and proposed budgets for the program elements into a comprehensive and balanced annual implementation plan.~~

~~(h) The implementing agencies shall develop comprehensive tribal and environmental justice work plans, including specific goals and objectives and projected expenditures that address all program areas.~~

~~(i) The authority shall review and approve, and, as appropriate, may recommend that implementing agencies modify, annual program plans and projected expenditures on behalf of Category A programs, based on the following criteria:~~

~~(1) Consistency with the program.~~

~~(2) The balanced achievement of the program's goals and objectives.~~

~~(j) If the authority does not approve an implementing agency's program plan or projected expenditures, the authority shall prepare and submit written findings to the appropriate policy and fiscal committees of the Legislature and the implementing agencies, describing how the program plan or projected expenditures do not meet the criteria adopted by the authority pursuant to subdivision (o) of Section 79421.~~

~~(k) If the authority recommends modification, the implementing agency shall resubmit the annual program plan or projected expenditures, as appropriate, to the authority for approval after making the necessary modifications.~~

~~(l) Nothing in this division limits or interferes with the final decisionmaking authority of the implementing agencies.~~

SEC. 12. Section 79423 of the Water Code, as added by Section 2 of Chapter 955 of the Statutes of 2002, is amended to read:

79423. (a) The implementing agencies shall annually submit to the director their annual program plan and proposed budget for the following budget year describing how each implementing agency proposes to implement their respective program elements during the following budget year. The director shall then submit a comprehensive budget proposal to the Secretary of the Resources Agency for consideration consistent with the existing budget development process. Individual departmental budget requests *submitted to the director are not subject to disclosure*

1 *under the Public Records Act (Chapter 3.5 (commencing with*  
2 *Section 6250) of Division 7 of Title 1 of the Government Code),*  
3 *and, notwithstanding Section 79414, discussions regarding those*  
4 *requests* are exempt from the Bagley-Keene Open Meeting Act  
5 (Article 9 (commencing with Section 11120) of Chapter 1 of Part  
6 1 of Division 3 of Title 2 of the Government Code). These  
7 programs shall also address environmental justice concerns and  
8 assess the impacts of projects and activities on tribal trust  
9 resources and tribal governmental concerns.

10 (b) Each ~~annual~~ program plan ~~and proposed budget~~ shall  
11 include programs that are designated as Category A programs in  
12 Attachment 3, entitled “Implementation Memorandum of  
13 Understanding” of the CALFED Bay-Delta Program Record of  
14 Decision, dated August 28, 2000, or as it may be amended.

15 (c) Annually, the authority shall consult with the agencies  
16 identified in subdivision (f) of Section 79401 and the Bay-Delta  
17 Public Advisory Committee, and shall determine, with the  
18 concurrence of the implementing agencies, those changes that  
19 shall be made to the list of Category A programs.

20 (d) Each ~~annual~~ program plan ~~and proposed budget~~ shall  
21 include program priorities, work plans, proposed budgets, and  
22 significant program products, including, but not limited to,  
23 regulations, grant or loan solicitations, schedules for production  
24 of environmental documents, and project selection processes.

25 (e) ~~Annual program~~ *Program* plans ~~and proposed budgets~~ also  
26 shall include a strategy and proposed budget for addressing  
27 program-specific, critical scientific uncertainties, developing and  
28 implementing performance measures, evaluating program  
29 actions, developing strategies for incorporating tribal and  
30 environmental justice interests, and conducting scientific review  
31 of program implementation and proposed projects. The  
32 implementing agency and the director shall consult with the lead  
33 scientist, as appropriate, to determine an appropriate science  
34 strategy and proposed budget.

35 (f) The implementing agencies shall develop comprehensive  
36 tribal and environmental justice work plans, including specific  
37 goals and objectives and projected expenditures that address all  
38 program areas.

39 (g) The implementing agencies shall coordinate the  
40 preparation of ~~annual~~ program plans ~~and proposed budgets~~ with

1 agencies participating in the ~~California~~ CALFED Bay-Delta  
2 Program, federally recognized Indian tribes, and other  
3 appropriate agencies.

4 (h) The implementing agencies and the director shall seek to  
5 integrate the ~~annual~~ *program* plans and ~~proposed budgets~~ for the  
6 program elements into a comprehensive and balanced annual  
7 implementation plan.

8 (i) Annually, the authority shall review and approve, and, as  
9 appropriate, may recommend that implementing agencies  
10 modify, ~~multiyear~~ program plans and ~~long-term expenditure~~  
11 ~~plans~~ on behalf of Category A programs, based on the following  
12 criteria:

13 (1) Consistency with the program.

14 (2) The balanced achievement of the program's goals and  
15 objectives.

16 (3) *Other criteria adopted pursuant to subdivision (o) of*  
17 *Section 79421.*

18 (j) If the authority does not approve an implementing agency's  
19 ~~multiyear~~ program plan and ~~long-term expenditure~~ plan, the  
20 authority shall prepare and submit written findings to the  
21 appropriate policy and fiscal committees of the Legislature and  
22 the implementing agencies, describing how ~~the multiyear~~  
23 ~~program plan and long-term expenditure plan~~ *do does* not meet  
24 the criteria ~~adopted by the authority pursuant to subdivision (o)~~  
25 ~~of Section 79421~~ *described in subdivision (i).*

26 (k) If the authority recommends modification to  
27 ~~implementation of the Budget Act for the current fiscal year or~~  
28 ~~the multiyear~~ a program plan and ~~long-term expenditure~~ plan, the  
29 implementing agency shall resubmit the ~~Budget Act~~  
30 ~~implementation plan, the multiyear plan, or the long-term~~  
31 ~~expenditure~~ *program* plan, as appropriate, to the authority for  
32 approval. If an implementing agency makes any of the  
33 modifications recommended by the authority, the authority shall  
34 submit these modifications to the Legislature.

35 (l) Nothing in this division limits or interferes with the final  
36 decisionmaking authority of the implementing agencies.

37 ~~(m) This section shall become operative only if this bill and~~  
38 ~~Senate Bill 1653 of the 2001-02 Regular Session are both~~  
39 ~~chaptered and become effective on or before January 1, 2003,~~

1 ~~and this bill is chaptered last, in which case this section shall~~  
2 ~~prevail over Section 79423, as added by Senate Bill 1653.~~

3 SEC. 13. Section 79440 of the Water Code is amended to  
4 read:

5 79440. For the purposes of this division, “implementing  
6 agency” includes those state agencies identified in Section 79441  
7 ~~until the United States, by statute or otherwise, has authorized the~~  
8 ~~identified federal agencies to participate in the governance and~~  
9 ~~implementation of the Bay-Delta Program in the manner set forth~~  
10 ~~in this division. Until that federal authorization has been~~  
11 ~~provided, the state implementing agencies shall consult,~~  
12 ~~cooperate, and coordinate with federal agencies in all matters~~  
13 ~~related to implementation of the program. It is anticipated that~~  
14 ~~federal agencies and officials, including federal agencies~~  
15 ~~designated as implementing agencies in Section 79441, shall~~  
16 ~~participate in the CALFED Bay-Delta Program and cooperate~~  
17 ~~with the state agencies; however, state agencies shall comply~~  
18 ~~with this division regardless of whether, and to what extent,~~  
19 ~~federal agencies and officials do so.~~

20 SEC. 14. Section 79450 of the Water Code is amended to  
21 read:

22 79450. The Governor, in consultation with the Secretary of  
23 the Interior, shall appoint a director *and a chief counsel* who shall  
24 serve at the pleasure of the authority.

25 SEC. 15. Section 79452 of the Water Code is amended to  
26 read:

27 79452. (a) The authority, with the advice of the director, shall  
28 appoint a lead scientist. The lead scientist shall report to the  
29 authority. The lead scientist, in cooperation with the  
30 implementing agencies, shall be responsible for the development  
31 of the science program element.

32 (b) The lead scientist shall meet the following requirements:

33 (1) Has undertaken substantial scientific research work in any  
34 field related to one or more of the program elements.

35 (2) Has experience managing environmental issues or advising  
36 high-level managers in methods for promoting science-based  
37 decisionmaking in the areas of water management and ecosystem  
38 restoration.

39 (3) Has a record of publication in peer reviewed scientific  
40 literature.

1 (c) For all program elements, the lead scientist shall ensure  
2 scientific application of adaptive management, monitoring, and  
3 investigations to reduce uncertainties, and full investigation of  
4 the effects of each program element on other program elements.

5 (d) The lead scientist shall ensure that peer review is employed  
6 extensively and prudently to ensure the quality of program  
7 planning, implementation, and evaluation. *The lead scientist may*  
8 *directly or indirectly contract for scientific experts without*  
9 *competitive bidding.*

10 (e) The purpose of the science program element shall be to  
11 carry out all of the following functions:

12 (1) Provide implementing agencies and the authority with  
13 authoritative and unbiased reviews of the state of scientific  
14 knowledge relevant to management and decisionmaking for the  
15 ~~California~~ CALFED Bay-Delta Program.

16 (2) Implement programs and projects to articulate, test, refine,  
17 and improve the scientific understanding of all aspects of the  
18 bay-delta and its watershed areas.

19 (3) Provide a comprehensive framework to integrate, monitor,  
20 and evaluate the use of adaptive management and the best  
21 available scientific understandings and practices for  
22 implementing the ~~California~~ CALFED Bay-Delta Program.

23 (4) Independently review the technical and scientific  
24 performance of the ~~California~~ CALFED Bay-Delta Program,  
25 including, but not limited to, all of the following:

26 (A) Conclusions.

27 (B) Studies, monitoring, performance measures.

28 (C) Data analyses.

29 (D) Scientific practices that form the scientific bases for  
30 program decisionmaking.

31 SEC. 16. Section 79453 of the Water Code, as added by  
32 Section 2 of Chapter 812 of the Statutes of 2002, is repealed.

33 ~~79453. The director may appoint and hire staff as necessary to~~  
34 ~~administer the affairs of the authority at a salary and~~  
35 ~~classification level commensurate with other state and federal~~  
36 ~~agencies.~~

37 SEC. 17. Section 79453 of the Water Code, as added by  
38 Section 3 of Chapter 955 of the Statutes of 2002, is amended to  
39 read:

1     79453. ~~(a) The director may appoint~~ *do all of the following,*  
2     *consistent with applicable state regulations:*

3     ~~(a) Appoint and hire staff as necessary to administer the affairs~~  
4     ~~of the authority at a salary and classification level commensurate~~  
5     ~~with other state and federal agencies.~~

6     ~~(b) This section shall become operative only if this bill and~~  
7     ~~Senate Bill 1653 of the 2001-02 Regular Session are both~~  
8     ~~chaptered and become effective on or before January 1, 2003,~~  
9     ~~and this bill is chaptered last, in which case this section shall~~  
10    ~~prevail over Section 79453, as added by Senate Bill 1653.~~

11    ~~(b) Establish or change classification levels.~~

12    ~~(c) Hire limited-term employees for up to four years.~~

13    ~~(d) Conduct exams, change pay ranges, discipline, demote, or~~  
14    ~~separate.~~

15    ~~(e) Use examination lists from other state agencies as~~  
16    ~~mandatory appropriate lists.~~

17    SEC. 18. Section 79455 of the Water Code, as added by  
18    Section 2 of Chapter 812 of the Statutes of 2002, is repealed.

19    ~~79455. (a) The director may fill authority staff positions with~~  
20    ~~the state employees hired by the authority, federal employees~~  
21    ~~assigned to the program by cooperating federal agencies, or with~~  
22    ~~staff from other state public entities.~~

23    ~~(b) Notwithstanding any other provision of law, and only for~~  
24    ~~the purposes of this division, the authority may hire members of~~  
25    ~~federally recognized Indian tribes and nonprofit organizations in~~  
26    ~~accordance with the interjurisdictional employee exchange~~  
27    ~~program described in Section 427 of Title 2 of the California~~  
28    ~~Code of Regulations.~~

29    ~~(c) The authority shall retain all state civil service positions~~  
30    ~~when the position is filled temporarily by way of the~~  
31    ~~interjurisdictional employee exchange program pursuant to~~  
32    ~~subdivision (b), without regard to whether that state position was~~  
33    ~~vacant.~~

34    SEC. 19. Section 79455 of the Water Code, as added by  
35    Section 4 of Chapter 955 of the Statutes of 2002, is amended to  
36    read:

37    79455. ~~(a)~~ Notwithstanding any other provision of law, and  
38    only for the purposes of this division, the authority may hire  
39    members of federally recognized Indian tribes and nonprofit  
40    organizations in accordance with the inter-jurisdictional

1 employee exchange program described in Section 427 of Title 2  
2 of the California Code of Regulations *without approval by the*  
3 *Department of General Services.*

4 ~~(b) This section shall become operative only if this bill and~~  
5 ~~Senate Bill 1653 of the 2001-02 Regular Session are both~~  
6 ~~chaptered and become effective on or before January 1, 2003,~~  
7 ~~and this bill is chaptered last, in which case this section shall~~  
8 ~~prevail over Section 79455, as added by Senate Bill 1653.~~

9 SEC. 20. Section 79460 of the Water Code is amended to  
10 read:

11 79460. (a) The authority shall provide administrative support  
12 for the Bay-Delta Public Advisory Committee.

13 (b) The authority shall take any administrative actions  
14 necessary to maintain the Bay-Delta Public Advisory  
15 Committee's status as an advisory committee under the Federal  
16 Advisory Committee Act (P.L. 92-463, as amended). *The*  
17 *Bay-Delta Public Advisory Committee may be treated as a state*  
18 *advisory committee.*

19 (c) The authority shall provide assistance to the Governor and  
20 Secretary of the Interior to ensure that the candidates for  
21 appointment to the Bay-Delta Public Advisory Committee are  
22 representatives of federally recognized Indian tribes or  
23 "stakeholder" groups, reflect a geographic diversity and diversity  
24 of interests affected by the health of the bay-delta, and have  
25 expertise in the relevant fields as specified in the committee's  
26 federal charter. Appointment shall be made to ensure that the  
27 committee as a whole is both balanced and diverse.

28 (d) (1) The Bay-Delta Public Advisory Committee shall  
29 advise and make recommendations to the authority and director  
30 on issues related to the ~~California~~ CALFED Bay-Delta Program  
31 and any of the processes, projects, or programs required by this  
32 division.

33 (2) *Section 1090 of the Government Code does not apply to*  
34 *members of the Bay-Delta Public Advisory Committee or its*  
35 *subcommittees when they are advising and making*  
36 *recommendations to the authority and director on proposed*  
37 *grant solicitation packages, including guidelines and criteria.*  
38 *Further, with regard to any advice from a member, the*  
39 *Legislature finds that the particular stakeholder organization*  
40 *represented by the member is tantamount to, and constitutes, the*



1 “public generally” within the meaning of Section 87103 of the  
2 Government Code.

3 (e) The members of the Bay-Delta Public Advisory Committee  
4 may receive reimbursement for necessary travel expenses  
5 incurred by the members in the performance of the members’  
6 duties, consistent with state per diem rates.

7 SEC. 21. Section 79472 is added to the Water Code, to read:

8 79472. (a) The Legislature finds and declares that it is in the  
9 public interest for the implementing agencies and the authority to  
10 receive the best possible scientific advice from scientists  
11 knowledgeable about current research, unknowns, and issues  
12 facing the Bay-Delta system. It is also in the public interest for  
13 scientific experts to compete for research funding in areas that  
14 would assist the authority.

15 (b) The lead scientist and the director are responsible for  
16 preparing and recommending to the authority for approval, grant  
17 solicitation packages, and proposed grant funding for scientific  
18 projects and research on topics affecting the Bay-Delta system,  
19 and they may seek assistance and review from scientific experts  
20 in the development of scientific programs, performance  
21 measures, research questions and other scientific issues.

22 (c) A member of the Independent Science Board or other  
23 science advisory panel, or an independent scientific expert who  
24 assists an implementing agency or the authority shall not be  
25 deemed for purposes of Sections 1090 or 87100 of the  
26 Government Code to have participated in the making of a  
27 contract that results from a competitive process to fund scientific  
28 research unless the scientific expert participated directly in the  
29 preparation of the grant solicitation package or the selection of  
30 projects to be funded.

31 SEC. 22. Section 79473 is added to the Water Code, to read:

32 79473. (a) Neither the Independent Science Board, nor any  
33 other independent science panel established to assist the  
34 implementing agencies and the authority, shall be subject to the  
35 requirements of Article 9 (commencing with Section 11120) of  
36 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government  
37 Code.

38 (b) Notwithstanding subdivision (a), the board or panel, in  
39 conducting its business, shall do all of the following:

1 (1) Determine and provide 10-day advance public notice of  
2 meetings that will be open to the public.

3 (2) Ensure that meetings to gather data from individuals who  
4 are not members of the board or panel are open to the public, and  
5 make available to the public written materials presented to the  
6 board or panel by those individuals, unless exempted by law.

7 (3) Make available to the public as soon as practicable, a brief  
8 summary of any meeting that is not an open meeting. Generally,  
9 meetings will be closed when the board or panel is deliberating  
10 on, or discussing the content, findings, or recommendations  
11 regarding a particular issue or report. The meeting summary shall  
12 identify the members present, the topics discussed, materials  
13 made available to members, and such other matters that the board  
14 or panel determines should be included.

15 (4) Make available to the public any final report or written  
16 recommendation, including the names of the principal reviewers  
17 who reviewed the report or written recommendation and who are  
18 not members of the board or panel. Draft documents prepared by  
19 the board or panel are not subject to disclosure under Chapter 3.5  
20 (commencing with Section 6250) of Division 7 of Title 1 of the  
21 Government Code.

22 SEC. 23. Chapter 3 (commencing with Section 79475) of  
23 Division 26.4 of the Water Code is repealed.

24 SEC. 24. The Legislature finds and declares, in accordance  
25 with paragraph (2) of subdivision (b) of Section 3 of Article 1 of  
26 the state Constitution, the following with regard to the enactment  
27 of Section 22 of this act:

28 (a) The CALFED Independent Science Board (ISB) is  
29 comprised of a group of diverse, nationally renowned scientists  
30 that meet only periodically. Additional independent science  
31 panels established to provide scientific advice on individual  
32 program elements are similarly constituted. The statutory charge  
33 of the ISB and additional science panels is to provide  
34 independent scientific advice to the California Bay-Delta  
35 Authority, the Bay-Delta Public Advisory Committee, and the  
36 CALFED implementing agencies.

37 (b) The participating scientists are accustomed to working on  
38 national scientific advisory panels, such as those convened by the  
39 National Academy of Sciences, which are exempt, with certain  
40 exceptions, from the open meeting requirements of the Federal

1 Advisory Committee Act; and that those federal exemptions  
2 allow the scientists to conduct candid and rigorous deliberations  
3 and peer review without potential political influence, while still  
4 requiring accountability and transparency with respect to final  
5 recommendations, advice, and reports.

6 (c) To ensure the independence and scientific quality of the  
7 work and advice from the ISB and additional independent  
8 science panels, and to continue to attract the best scientists in the  
9 country, an exemption from the Bagley-Keene Open Meeting Act  
10 (Article 9 (commencing with Section 11120) of Chapter 1 of Part  
11 1 of Division 3 of Title 2 of the Government Code) is  
12 appropriate, but with public accountability requirements modeled  
13 after the exemption in federal law under which the participating  
14 scientists are accustomed to operating.

15 SEC. 25. This act is an urgency statute necessary for the  
16 immediate preservation of the public peace, health, or safety  
17 within the meaning of Article IV of the Constitution and shall go  
18 into immediate effect. The facts constituting the necessity are:

19 In order to ensure continued collaboration among the state and  
20 federal CALFED implementing agencies and the coordinated  
21 participation of those agencies on the California Bay-Delta  
22 Authority in overseeing the CALFED Bay-Delta Program, it is  
23 necessary to conform, at the earliest possible time, the California  
24 Bay-Delta Authority Act (Div. 26.4 (commencing with Section  
25 79400) of the Water Code) to the recently-enacted federal  
26 CALFED Bay-Delta Authorization Act (P.L.108-361), to take  
27 effect immediately.